

Head Start: Designation Renewal System

Updated August 14, 2013

Congressional Research Service

<https://crsreports.congress.gov>

R43171

Summary

Head Start is a federal program that has provided comprehensive early childhood development services (e.g., education, health, nutrition, and social services) to low-income children and their families since 1965. These services are intended to promote the school readiness of children by enhancing their cognitive, social, and emotional development. At the federal level, Head Start is administered by the Office of Head Start within the Administration for Children and Families at the U.S. Department of Health and Human Services (HHS). Federal Head Start funds are provided directly to local public and private nonprofit and for-profit agencies (called “grantees”), rather than through states. At this time, programs are administered by roughly 1,600 grantees.

Since the program’s inception, Head Start grantees have generally been given grant awards for indefinite periods (i.e., awards with no end date). However, the 2007 Head Start reauthorization law (P.L. 110-134) changed this by instituting a five-year designation period for Head Start grantees. Under this law, at the end of its five-year designation period, a grantee must demonstrate that it is delivering high-quality and comprehensive services, or else the grant is to be opened for re-competition. The law refers to the process of identifying grantees for re-competition as the Designation Renewal System (DRS). The law tasked HHS with establishing the DRS in consultation with a panel of experts and based on parameters specified in the law.

In January 2008, HHS convened an Advisory Committee on Re-designation of Head Start Grantees. Twelve months later, the advisory committee released a report with formal recommendations for implementing the DRS. In September 2010, HHS published a Notice of Proposed Rulemaking (NPRM) on the DRS based, in part, on the advisory committee’s recommendations. HHS received approximately 16,000 comments on the proposed rule from Head Start grantees, parents, teachers, state associations, national organizations, academic institutions, and legal entities. HHS took all comments into consideration before publishing a final rule on the DRS in November 2011.

The DRS final rule established seven indicators for identifying Head Start grantees that are not providing “high-quality and comprehensive services.” The indicators address various aspects of program quality, licensing and operations, and fiscal and internal controls. Any grantee that fails to meet the minimum quality standards set by one or more of the seven indicators will automatically be required to compete for continued funding.

Under the terms of the final rule, the DRS became effective on December 9, 2011. That month, HHS announced the first cohort of grantees required to re-compete. A second cohort of grantees designated for re-competition was announced in January 2013. DRS competitions began in 2012. As of July 2013, HHS had awarded roughly 153 grants through DRS competitions.

Contents

Introduction	1
DRS Background.....	2
The 2007 Reauthorization Law	2
Secretary’s Advisory Committee on Re-designation	3
Notice of Proposed Rulemaking	4
DRS Final Rule	4
Indicators/Triggers	5
Differences from the NPRM	5
Tribal Consultations	6
How Are Deficiencies Identified?	6
What Is the CLASS: Pre-K?	7
DRS Implementation	8
Competition Process.....	8
Competition Results	9
Additional DRS Issues	10
Final Decisions and Appeals	10
Legal Challenges	10
Evaluation of the DRS	11

Tables

Table 1. DRS Chronology	1
Table 2. CLASS: Pre-K Scores for Head Start Grantees: Average Scores, DRS Minimum Quality Thresholds, and Bottom Decile Scores for FY2012	7
Table 3. DRS Triggers for Identifying Grantees for Re-competition	12

Contacts

Author Information.....	13
-------------------------	----

Introduction

Head Start is a federal program that has provided comprehensive early childhood development services (e.g., education, health, nutrition, and social services) to low-income children and their families since 1965.¹ These services are intended to promote the school readiness of children by enhancing their cognitive, social, and emotional development. Most children served in Head Start programs are three- and four-year-olds, but in the mid-1990s Head Start was expanded to include Early Head Start programs targeted to infants, toddlers, and expectant parents. In this report, the term Head Start is inclusive of the Early Head Start program, unless otherwise specified.

At the federal level, the Head Start program is administered by the Office of Head Start (OHS) within the Administration for Children and Families (ACF) at the U.S. Department of Health and Human Services (HHS). HHS provides federal Head Start funds directly to local public and private non-profit and for-profit agencies (called “grantees”), rather than through states. Head Start programs are locally designed and are administered by roughly 1,600 grantees.

Since the program’s inception, Head Start grantees have generally been given grant awards for indefinite periods (i.e., awards with no end date). However, the 2007 Head Start reauthorization law (P.L. 110-134) changed this by instituting a five-year designation period for Head Start grantees. Under the new law, at the end of its five-year designation period, a grantee must demonstrate that it is delivering high-quality and comprehensive services, or else the grant is to be opened for re-competition. The law refers to the process of identifying grantees for re-competition as the Designation Renewal System (DRS). HHS was tasked with establishing the DRS, based on certain parameters specified within the law.

This report provides an overview of the major milestones leading up to the early implementation of the DRS.² **Table 1** outlines a chronology of these milestones and serves as a preview to the remainder of the report, which discusses these events and activities in greater detail. The bulk of the report is focused on the DRS itself, including the indicators used to identify grantees for re-competition and the status of competitions to date. The report concludes with a discussion of additional issues related to the DRS, including legal challenges and evaluation plans.

Table 1. DRS Chronology

Date	Action
September 2007	Head Start reauthorization law calls for a five-year limitation on grantee designation periods and for HHS to establish a new re-competition process.
January 2008	HHS Secretary convenes an Advisory Committee on Re-designation of Head Start Grantees to make recommendations on how the designation renewal system should be implemented.
December 2008	HHS Secretary’s Advisory Committee on Re-designation of Head Start Grantees releases a report with recommendations.
September 2010	HHS publishes a Notice of Proposed Rulemaking (NPRM) on designation renewal and re-competition, giving the public 90 days to comment. HHS releases a report to Congress on the content of the NPRM.
September to December 2010	HHS receives roughly 16,000 comments on the NPRM from Head Start grantees, parents, teachers, state associations, national organizations, academic institutions, and legal entities.

¹ Head Start began in 1965 under the general authority of the Economic Opportunity Act of 1964 (P.L. 88-452).

² This report is focused exclusively on the DRS. For more information on the Head Start program as a whole, see CRS Report RL30952, *Head Start: Background and Issues*, by Karen E. Lynch.

Date	Action
November 2011	HHS publishes a Final Rule on designation renewal and re-competition. HHS releases a report to Congress on the content of the final rule.
December 2011	HHS announces the first cohort of grantees required to compete for continued funding under the DRS. In total, 131 grantees are designated for re-competition. ^a
January 2013	HHS announces the second cohort of grantees required to compete for continued funding under the DRS. In total, 122 grantees are designated for re-competition.
April 2013	HHS makes a preliminary announcement on results of the first round of re-competitions.
July 2013	HHS announces awards to roughly 153 grantees from Cohort 1 re-competitions.

Source: Source data for all of the publications, reports, and press releases cited above can be found on the HHS Early Childhood Learning and Knowledge Center website at <http://eclkc.ohs.acf.hhs.gov/hslc/hs/grants/dr>.

Notes: More detailed citations for each source can also be found elsewhere in this report.

- a. The press release said 132 grantees would be required to re-compete, but one grantee was later removed from the list because a deficiency was revoked, leaving 131 grantees designated for re-competition.

DRS Background

In the years leading up to the 2007 reauthorization law, Congress demonstrated a growing interest in introducing more competition to the Head Start program. A Government Accountability Office (GAO) report published in February 2005 recommended that HHS begin re-competing grants in cases where a grantee had failed to meet program, financial management, or other requirements.³ In response, HHS expressed concerns over the legal authority for entering into such competitions and GAO suggested that Congress may wish to “clarify” these authorities. Subsequently, the idea of limiting grantee designation periods to five years and requiring “low performing” grantees to re-compete was raised at congressional hearings and in various draft reauthorization bills throughout the 109th and 110th Congresses.⁴ However, it was not until December 2007 that Congress ultimately enacted legislation requiring HHS to carry out these activities.

The 2007 Reauthorization Law

The Improving Head Start for School Readiness Act of 2007 (P.L. 110-134) reauthorized Head Start through the end of FY2012. This law significantly amended the existing Head Start Act. A seminal component of the reauthorization law was the requirement that HHS develop a “Designation Renewal System” to identify low performing grantees for re-competition.

Under the law, the stated purpose of the DRS is to “determine if a Head Start agency is delivering a high quality and comprehensive Head Start program that meets the educational, health, nutritional, and social needs of the children and families it serves, and meets program and financial management requirements and standards.”⁵ Section 641(c) of the amended Head Start

³ U.S. Government Accountability Office, *Head Start: Comprehensive Approach to Identifying and Addressing Risks Could Help Prevent Grantee Financial Management Weaknesses*, GAO-05-176, February 2005, <http://www.gao.gov/new.items/d05176.pdf>.

⁴ For instance, see H.R. 2123 (109th), S. 1107 (109th), S. 556 (110th) and H.R. 1429 (110th). See also U.S. House, Committee on Education and the Workforce, Subcommittee on Education Reform, *Best of Head Start: Learning from Model Programs*, Hearing, 109th Congress, 1st session, April 14, 2005, and U.S. House, Committee on Education and the Workforce, *Financial Accountability in the Head Start Early Childhood Program*, Hearing, 109th Congress, 1st session, April 5, 2005.

⁵ Section 641(c)(1) of the Head Start Act. The Head Start Act can be found at 42 USC 9801 et seq.

Act tasked the Secretary of HHS (the Secretary) with developing the DRS, in consultation with a panel of experts, and specified that the DRS must base determinations of program quality on

- annual budget and fiscal management data;
- program monitoring reviews (which must occur at least once every three years according to requirements set forth in Section 641A(c) of the Head Start Act);
- annual audits (as required by Section 647 of the Head Start Act);
- classroom quality (as measured under Section 641A(2)(F) of the Head Start Act, which calls for the use of a “valid and reliable research-based observational instrument, implemented by qualified individuals with demonstrated reliability, that assesses classroom quality, including assessing multiple dimensions of teacher-child interactions that are linked to positive child development and later achievement”); and
- Program Information Reports (annual reports submitted by all Head Start grantees and delegate grantees, which provide comprehensive data on staff and services, as well as children and families served).

The conference report (H.Rept. 110-439) accompanying the 2007 reauthorization law stated that the DRS was *not* expected to require the majority of Head Start programs to re-compete: “The Conferees strongly believe the majority of Head Start programs are delivering high quality services, and therefore do not intend for this new designation system to result in competition for designation for the majority of Head Start programs.”⁶ The conference report went on to express the belief that having low-performing grantees compete for funding would improve overall program performance.

Secretary’s Advisory Committee on Re-designation

The 2007 reauthorization law called for the Secretary of HHS to convene an expert panel to make recommendations on the development of a “transparent, reliable, and valid” system for designation renewal.⁷ To this end, the Secretary chartered an advisory committee in January 2008. Twelve months later, in December 2008, the advisory committee released a report with formal recommendations for implementing the DRS.⁸

The advisory committee recommended that the DRS include a combination of automatic indicators and key quality indicators. Under the committee’s proposal, the *automatic indicators* would be used for problems of “such a serious nature that a single occurrence would automatically require a grantee to compete for renewal.”⁹ The committee suggested that this include cases in which a grantee had declared bankruptcy, been debarred from receiving federal funds, had a license revoked, or had a “high number” of deficiencies identified in a program monitoring review (where “high number” was defined as two standard deviations from the mean).¹⁰ Meanwhile, *key quality indicators* would require competition “when a pattern of poor

⁶ H.Rept. 110-439, p. 111.

⁷ See Section 641(c)(2).

⁸ Jerlean E. Daniel, et. al., *Report of the Secretary’s Advisory Committee on the Re-designation of Head Start Grantees*, December 2008, http://eclkc.ohs.acf.hhs.gov/hslc/hs/dr/pdf/Secy-Advisory-Committee_Report-Redesignation_December-2008.pdf.

⁹ Ibid, p. 3.

¹⁰ Ibid, p. 7.

performance on multiple indicators is present.”¹¹ The advisory committee recommended the development of key quality indicators in four broad areas (program management, education, comprehensive services, and financial management) and called for the Secretary to establish a threshold for each indicator such that a meaningful distinction would be made between programs providing high-quality services and those not providing high-quality services.¹²

Notice of Proposed Rulemaking

In September 2010, HHS released a Notice of Proposed Rulemaking (NPRM) on designation renewal and re-competition based, in part, on the advisory committee’s recommendations.¹³ The NPRM proposed re-competing at least 25% of all Head Start and Early Head Start grantees participating in monitoring reviews in a given year. (Monitoring reviews are largely triennial, so roughly one-third of all grantees participate in monitoring reviews each year.) Under the proposal, grantees would be identified for re-competition based on performance on seven proposed indicators addressing varied aspects of program quality, licensing and operations, and fiscal and internal controls. (The seven indicators proposed in the NPRM serve as the basis for the seven indicators included in the final rule, with some adjustments. For a more robust discussion of these indicators, see the “DRS Final Rule” section of this report.)

The NPRM proposed requiring automatic re-competition for any grantee that failed to meet standards set by one or more of the seven indicators. In the event fewer than 25% of grantees were to trigger re-competition in a given year, the NPRM proposed using “objective criteria” to identify additional low performing grantees for re-competition. The NPRM did not identify these objective criteria, but solicited feedback from stakeholders on what they should be. Ultimately, the final rule eliminated the 25% requirement altogether (see related discussion in the section on “Differences from the NPRM”).

The NPRM gave the public 90 days to comment on the proposed rule (i.e., until December 21, 2010). During that time, HHS received approximately 16,000 comments on the NPRM from Head Start grantees, parents, teachers, state associations, national organizations, academic institutions, and legal entities.¹⁴ HHS took these comments into consideration before publishing a final rule on the DRS in November 2011.

DRS Final Rule

HHS published the DRS final rule on November 9, 2011.¹⁵ Under the terms of the final rule, the DRS became effective on December 9, 2011, thirty days after the rule was published in the

¹¹ Ibid, p. 3.

¹² Ibid, pp. 7, 9-11.

¹³ U.S. Department of Health and Human Services, Administration for Children and Families, “Notice of Proposed Rulemaking on Designation Renewal and Re-competition,” 75 *Federal Register* 57704-57719, September 22, 2010, <http://www.gpo.gov/fdsys/pkg/FR-2010-09-22/pdf/2010-23583.pdf>. See also U.S. Department of Health and Human Services, Administration for Children and Families, Office of Head Start, *Report to Congress on the Proposed Head Start Program Designation Renewal System*, September 22, 2010, http://eclkc.ohs.acf.hhs.gov/hslc/mr/rc/Head_Start_Proposed_Designation_Renewal_System.pdf.

¹⁴ U.S. Department of Health and Human Services, Administration for Children and Families, Office of Head Start, *Report to Congress on the Final Head Start Program Designation Renewal System*, November 9, 2011, p. 6, http://eclkc.ohs.acf.hhs.gov/hslc/mr/rc/Head_Start_Designation_Renewal_System_Final_Rule.pdf (hereinafter cited as ACF, *Report to Congress on the DRS Final Rule*, November 2011).

¹⁵ U.S. Department of Health and Human Services, Administration for Children and Families, “Final Rule on

Federal Register. This section of the report explores the contents of the final rule, with emphasis on the indicators selected for identifying grantees for re-competition.

Indicators/Triggers

The final rule established seven indicators for identifying programs that are not providing “high-quality and comprehensive services.” Any Head Start grantee that fails to meet the minimum quality standards established by one or more of the seven indicators listed below (and described in greater detail in **Table 3** at the end of this report) is automatically required to compete for continued funding. This does not mean the grantee will automatically lose its funding. Rather, it means the grantee will have to successfully compete against other interested applicants to continue to receive funding.

DRS Triggers for Re-competition:

1. The grantee has had one or more **deficiencies** identified in a single monitoring review.
2. The grantee has failed to establish and use **goals for improving school-readiness** (including analysis of aggregate and individual child-level assessment data).
3. The grantee has received a low score on one or more domains of the **CLASS: Pre-K**, an observational assessment tool used to measure classroom quality. (This indicator does not apply to Early Head Start programs or those using only the home-based program option.)
4. The grantee has had its **license revoked** by a state or local authority. (An exception is made if the revocation is overturned or withdrawn before the competition is announced.)
5. The grantee has had **operations suspended** by HHS. (An exception is made if the suspension has been overturned or withdrawn, or the grantee has appealed the suspension and has not had a chance to show cause as to why it should be lifted or not be imposed.)
6. The grantee has been **debarred** from receiving funds from any federal or state agency or **disqualified** from participating in the Child and Adult Care Food Program (CACFP).
7. The grantee has been determined to be at risk of ceasing to be a **“going concern”** by HHS based on an audit or other investigation within the 12 month period preceding the decision on whether a grantee must compete for funding.

(Additional details about the seven indicators are provided in **Table 3** at the back of this report.)

Differences from the NPRM

The main difference between the proposed rule and the final rule is that the final rule eliminated a provision from the NPRM that would have required at least 25% of grantees reviewed in each round to compete for continued funding. The final rule included no such provision, but rather expanded provisions related to the CLASS: Pre-K assessments, such that grantees are required to compete if they fail to meet a minimum quality threshold on any CLASS domain *or* if they

Designation Renewal and Re-competition,” 76 *Federal Register* 70010-70032, November 9, 2011, <http://www.gpo.gov/fdsys/pkg/FR-2011-11-09/pdf/2011-28880.pdf>. The final rule is codified at 45 C.F.R. 1307.

receive a CLASS score that falls within the bottom 10% on any domain (unless a grantee scoring in the bottom 10% received a score indicative of an “exceptional” level of quality). Based on changes in the final rule, HHS estimated that about one-third of all programs would be designated for re-competition.¹⁶

Tribal Consultations

Pursuant to requirements in the law, the final rule includes a special provision for American Indian and Alaska Native (AIAN) Head Start and Early Head Start programs.¹⁷ When such programs fail to meet the minimum standards established by one or more of the seven quality indicators, HHS is to engage in a government-to-government consultation with the appropriate tribal government(s) to develop a quality improvement plan for the grantee. This plan must be implemented within six months of the DRS determination. Not more than six months after the implementation of the quality improvement plan, HHS is to re-evaluate the performance of the grantee. If the grantee is still not delivering a high-quality and comprehensive program, then HHS is to hold a competition for the area served by the grantee. In general, a non-AIAN Head Start or Early Head Start agency is not eligible to win such a competition unless there is no AIAN Head Start or Early Head Start agency available. In such cases, a non-AIAN Head Start or Early Head Start program may receive the grant until such time as an AIAN Head Start or Early Head Start agency becomes available.

How Are Deficiencies Identified?

Separate from the DRS, the Head Start Act requires HHS to conduct a program monitoring review for each grantee at least once every three years. (New grantees are subject to a full review immediately upon completion of their first program year, but while data from first-year reviews are used for general program oversight, they are exempt from consideration as part of the DRS.) Monitoring reviews are used to determine whether or not grantees are meeting applicable standards for program, administrative, financial management, and other requirements. The law requires follow-up visits for any agency determined, based on findings from a monitoring review, to have one or more deficiencies or significant areas of noncompliance. The law allows for unannounced site inspections of Head Start centers, as appropriate.

In this context, a deficiency represents (1) a systemic or substantial material failure on the part of a grantee to meet Head Start program performance standards (as specified in law and regulation), (2) a systemic or material failure of the governing body of an agency to fully exercise its legal and fiduciary responsibilities, or (3) an unresolved area of noncompliance.¹⁸ In practice, this may mean that a grantee has, for instance, misused its federal Head Start funds or failed to minimize threats to the health, safety, or civil rights of children or staff. (See **Table 3** for more specifics.) The law requires HHS to notify grantees in writing when a deficiency has been identified and to indicate whether the deficiency is to be corrected immediately or pursuant to a Quality Improvement Plan. Failure to correct a deficiency in a timely manner (to be not more than one year) constitutes a material failure by a grantee to comply with the terms and conditions of its funding award. This means that—separate from the DRS—grantees who fail to correct deficiencies in a timely manner are at risk of termination or denial of refunding.

¹⁶ ACF, *Report to Congress on the DRS Final Rule*, November 2011, p. 5.

¹⁷ See 45 C.F.R. 1307.6 and Sections 641(c)(7)(B) and 641(e) of the Head Start Act.

¹⁸ See Section 637(2) of the Head Start Act and 45 C.F.R. 1304.3(a)(6).

Under the DRS final rule, the issuance of one or more deficiencies within a grantee's DRS review period will trigger re-competition, regardless of how quickly the grantee corrects the deficiency. According to HHS, the correction of a deficiency is "required in order to avoid termination, but is not considered in determinations made under the Designation Renewal System."¹⁹ In FY2009, a total of 22 grantees (4.6% of all grantees who underwent first year or triennial reviews) were found to have one or more deficiencies.²⁰ The majority of these deficiencies were based on threats to the health and safety of children or staff (e.g., failure to conduct criminal background checks, failure to keep premises clean and free of undesirable or hazardous materials).

What Is the CLASS: Pre-K?

The Classroom Assessment Scoring System (CLASS) is an observational assessment tool used to measure classroom quality. The CLASS: Pre-K is specifically designed to assess the interactions of preschool children, ages 3-5, in classroom settings. The CLASS: Pre-K is organized around three domains: (1) Emotional Support, (2) Classroom Organization, and (3) Instructional Support. The Emotional Support domain examines positive and negative climate in a classroom, as well as teachers' sensitivity and regard for student perspectives. The Classroom Organization domain explores behavior management, productivity, and learning formats. The Instructional Support domain assesses the use of curriculum in promoting cognitive and language development.

CLASS observations are conducted by trained and certified "CLASS Observers," who have passed a reliability test.²¹ CLASS reviewers must be recertified on an annual basis. CLASS Observers code classroom interactions across domains using a 7-point scale. For the DRS, minimum quality thresholds differ by domain. Grantees will trigger re-competition by scoring below 4 on Emotional Support, below 3 on Classroom Organization, below 2 on Instructional Support, or in the lowest decile (i.e., bottom 10%) on any CLASS domain.

Table 2 compares the average scores for Head Start grantees in FY2012 with the minimum quality thresholds for the DRS.

Table 2. CLASS: Pre-K Scores for Head Start Grantees: Average Scores, DRS Minimum Quality Thresholds, and Bottom Decile Scores for FY2012

Domain	Average Scores for Grantees in FY2012	Minimum Quality Thresholds for DRS	
		General Threshold (scoring below this level results in re-competition)	Bottom 10% for FY2012 (scoring at or below this level results in re-competition) ^a
Emotional Support	5.90	4	5.4926
Classroom Organization	5.45	3	4.8571
Instructional Support	2.98	2	2.1923

¹⁹ Colleen Rathgeb, "System for Designation Renewal of Head Start and Early Head Start Grantees," Office of Head Start, Administration for Children and Families, powerpoint presentation, September 12, 2012.

²⁰ Office of Head Start, Administration for Children and Families, U.S. Department of Health and Human Services, *Report to Congress on Head Start Monitoring, Fiscal Year 2009*, p. 26, http://eclkc.ohs.acf.hhs.gov/hslc/mr/rc/FY2009_Head_Start_%20Monitoring_Report.pdf. Note that deficiency findings from a first year review are not considered for DRS purposes.

²¹ Learn more at <http://eclkc.ohs.acf.hhs.gov/hslc/sr/quality/class> or <http://www.teachstone.org/about-the-class/>.

Source: Table prepared by the Congressional Research Service based on information provided in a frequently asked questions summary by the HHS Office of Head Start, *Use of Classroom Assessment Scoring System (CLASS) in Head Start*, as viewed online on May 9, 2013, <http://eclkc.ohs.acf.hhs.gov/hslc/sr/quality/class/docs/use-of-class.pdf>.

Notes: The table displays the greatest level detail (i.e., most decimal places) made available by HHS. The CLASS: Pre-K is not used for Early Head Start programs or programs operating a home-based option only.

- a. Each year, the 10% of grantees reviewed that receive the lowest average scores in each domain are required to re-compete (an exception is made for grantees in the bottom decile if they scored a 6 or 7). For FY2012, grantees scoring at or below the levels shown in this column represent the bottom 10%.

Under the terms of the final rule, the CLASS: Pre-K component of the DRS does not apply to Early Head Start programs (which serve infants, toddlers, and expectant parents) or programs operating only a home-based option. This is because the CLASS: Pre-K is not designed to assess the quality of home-based programs or programs serving infants and toddlers. According to the preamble to the final rule, HHS will “consider incorporating a valid and reliable measure of teacher-child interaction in Early Head Start and in the Home-based program option when such a tool becomes available” and will implement such a tool only after “soliciting public input through an NPRM.”²²

DRS Implementation

Under the final rule, any new grant awarded after the rule’s effective date (December 9, 2011) is to be designated for a five-year period, instead of an indefinite period. For existing grantees, the final rule called for the DRS to be phased-in over a three-year transition period (i.e., December 9, 2011, to December 9, 2014).

During the first year of the transition period, HHS reviewed all existing grantees against five of the seven indicators (school readiness goals/data and CLASS: Pre-K scores were excluded). During the following two years, HHS planned to evaluate any grantees that had not triggered re-competition in the first year against all seven DRS indicators. At some point prior to the end of the three-year transition period, any grantee that has not triggered re-competition is to be notified that they have been deemed eligible for five years of renewed funding without competition.²³

Competition Process

Thus far, HHS has announced the first two cohorts of grantees required to re-compete:

- *Cohort 1:* In December 2011, based on an assessment of five of the seven DRS indicators, HHS notified 131 grantees that they would be required to re-compete for funding.²⁴

²² See 76 *Federal Register* 70020.

²³ For more information about the transition to five-year project periods, see the Office of Head Start Information Memorandum, ACF-IM-HS-13-02, *Five-Year Head Start Project Periods*, July 1, 2013, http://eclkc.ohs.acf.hhs.gov/hslc/standards/IMs_and_PIs_in_PDF/PDF_IMs/IM2013/ACF-IM-HS-13-02.pdf.

²⁴ U.S. Department of Health and Human Services, Administration for Children and Families, “HHS continues Head Start quality push, notifies grantees selected to compete for continued funding,” press release, December 19, 2011, <http://www.acf.hhs.gov/press/headstart-12-19-2011-0>. Although the press release said 132 grantees would be required to re-compete, one grantee was later removed from the list because a deficiency was revoked, leaving 131 grantees designated for re-competition. A list of most of the Cohort 1 grantees is available online at <http://eclkc.ohs.acf.hhs.gov/hslc/hs/dr/pdf/Grantees-notified-of-requirement-to-compete-for-continued-funding.pdf>. This list does not include the six grantees from Cohort 1 who will re-compete as part of the summer 2013 Birth-to-Five Pilot Project competitions.

- *Cohort 2:* In January 2013, based on an initial review of the full seven indicators, HHS notified 122 grantees that they would be required to re-compete for funding.²⁵

Once a grantee has been designated for re-competition, the next step is to announce the availability of funding and to hold a competition. HHS began posting Funding Opportunity Announcements for DRS competitions in 2012. Funding opportunities made available as part of the DRS are generally opened only to applicants looking to serve families within the same service areas currently served by grantees who triggered re-competition. Federal regulations define a *service area* as the “geographic area identified in an approved grant application within which a grantee may provide Head Start services.”²⁶ As a rule, service areas are unique to individual grantees (i.e., there is no overlap), meaning that HHS must hold individual competitions for each grantee’s slot to ensure coverage for each service area affected by the DRS. In some cases, DRS competitions may result in larger service areas being broken into smaller service areas based on the interest and capacity of applicants (and the quality of applications).

To support agencies applying for these competitions, HHS established a grant application toolkit.²⁷ The toolkit provides explanatory information about Head Start, links to funding opportunities, and a number of resources to support agencies in completing their applications (e.g., details on how to apply, the criteria by which applicants will be evaluated, and answers to frequently asked questions). All applications are reviewed by a panel of independent early childhood professionals and assessed for viability by Certified Public Accountants.

Competition Results

On July 2, 2013, HHS announced that grants would be awarded to roughly 153 successful applicants from Cohort 1 competitions.²⁸ The announcement indicated that in some cases the selection panel had determined an existing grant would be more effective if split among multiple agencies. The July 2013 announcement followed a preliminary press release from April 2013, in which HHS had indicated that, based on preliminary competition results, roughly 80 of the original Cohort 1 grantees would continue to receive funding, 25 of the original grantees would be replaced, and 14 of the original grantees would see their grants split up between new and existing providers.²⁹ These numbers suggest that roughly three-quarters of the Cohort 1 grantees who have undergone re-competition will retain their grants (in part or in full).³⁰ The April 2013

²⁵ U.S. Department of Health and Human Services, Administration for Children and Families, “Head Start continues quality reforms with second group of competitions,” press release, January 17, 2013, <http://www.acf.hhs.gov/press/head-start-continues-quality-reforms-with-second-group-of-competitions>. A list of the Cohort 2 grantees is available separately at <http://eclkc.ohs.acf.hhs.gov/hslc/hs/dr/pdf/2nd-cohort-competition.pdf>.

²⁶ See 45 C.F.R. 1305.2(r). Because service areas are self-identified and defined by grantees, not by HHS, they can vary widely in size and scope. In their applications, grantees must identify their service area by county or by sub-county areas, such as municipalities, towns, or census tracts (see 45 C.F.R. 1305.3(a)).

²⁷ See <http://eclkc.ohs.acf.hhs.gov/hslc/hs/grants/grant-toolkit>.

²⁸ U.S. Department of Health and Human Services, Administration for Children and Families, “Head Start and Early Head Start standards raised to increase quality and accountability,” press release, July 2, 2013, <http://www.acf.hhs.gov/press/head-start-and-early-head-start-standards-raised-to-increase-quality-and>. A list of the awardees is available separately at <http://eclkc.ohs.acf.hhs.gov/hslc/hs/grants/dr/cohort-1-awards-results.html>.

²⁹ U.S. Department of Health and Human Services, Administration for Children and Families, “Head Start providers improve quality through new competitions, greater accountability,” press release, April 3, 2013, <http://www.acf.hhs.gov/node/16359>. A list of the preliminarily selected awardees is available separately at <http://eclkc.ohs.acf.hhs.gov/hslc/hs/dr/prelim-1st-cohort-awardees.html>.

³⁰ This estimate was calculated based on the assumption that 94 out of 125 Cohort 1 grantees retained some or all of

announcement also stated that some of the Cohort 1 competitions had no successful applicants, meaning that HHS will have to hold a new series of competitions for grants in these service areas. In addition, a few Cohort 1 grantees have not yet been re-competed, as six of these grants were slated for inclusion in the Birth-to-Five Pilot competition currently underway.³¹ Meanwhile, funding opportunity announcements for many Cohort 2 grantees were issued on July 25, 2013.³²

Additional DRS Issues

Final Decisions and Appeals

Under the terms of the final rule, grantees designated for re-competition do not have the right to appeal, meaning that all DRS decisions are final. Some comments on the NPRM requested that the final rule include procedures for these decisions to be appealed, but HHS did not adopt this policy. HHS addressed this decision in the preamble to the final rule, noting that the 2007 reauthorization law had not required an appeals procedure for DRS decisions.³³ HHS noted that provisions elsewhere in the Head Start Act require appeals procedures to be in place for specified circumstances. For instance, the law states that grantees must be able to appeal decisions by HHS to terminate or reduce a grant award or to suspend a grantee for more than 30 days.³⁴

Legal Challenges³⁵

Following publication of the DRS final rule, several non-profit associations filed a lawsuit challenging the lawfulness of the “single deficiency trigger” in the final regulations. In *Ohio Head Start v. Dep’t. Health and Human Serv.*,³⁶ the plaintiffs, three separate associations whose membership included some Head Start agencies required to compete for new five-year Head Start grants because of one or more deficiency findings, argued that the single deficiency trigger was invalid on several grounds: (1) it was impermissibly retroactive because it applied to groups that had already received funding; (2) it deprived grantees of their protected property and liberty interests in grant renewals without due process; and (3) it was arbitrary and capricious under the Administrative Procedure Act.³⁷

The federal district court dismissed the challenges on summary judgment, concluding that the Head Start associations failed on all claims.³⁸ The court first noted that the DRS applies to future

their funding following the re-competition process. (The remaining six Cohort 1 grantees have not yet competed.)

³¹ For more information on the Birth-to-Five Pilot Project, see U.S. Department of Health and Human Services, Administration for Children and Families, “Head Start launches pilot project to encourage innovation in birth-to-5 education,” press release, February 4, 2013, <http://www.acf.hhs.gov/press/head-start-launches-pilot-project-to-education>.

³² U.S. Department of Health and Human Services, Administration for Children and Families, “Head Start Grant Opportunities Expand Successful Birth-to-Five Pilot Initiative,” press release, July 25, 2013, <http://www.acf.hhs.gov/press/head-start-grant-opportunities-expand-successful-birth-to-five-pilot>. Individual funding opportunity announcements by service area are available at <http://www.acf.hhs.gov/grants/open/foa/office/ohs>.

³³ See 76 *Federal Register* 70012.

³⁴ See Section 646 of the Head Start Act and 45 C.F.R. 1303.

³⁵ This section was prepared by Erin Davis, law clerk, under the general supervision of Kathleen Swendiman, a legislative attorney in the CRS American Law Division.

³⁶ *Ohio Head Start Ass’n v. United States Dep’t Health and Human Serv.*, 873 F. Supp. 2d 335 (D.D.C. 2012).

³⁷ *Ibid.*, 345.

³⁸ *Ibid.*

grants, not current grants, so it is not retroactive.³⁹ As to due process, the court ruled that the plaintiffs did not identify a protected property or liberty interest that needed to be protected, and even if they had, the agency provides sufficient constitutional due process.⁴⁰ Finally, under the administrative challenge, the court held that the rule was not arbitrary or capricious because, while the Secretary had to provide a reasonable explanation for why the agency decided not to follow the recommendation of the HHS Secretary's Advisory Committee regarding deficiencies (i.e., to re-compete programs with deficiencies equal to or exceeding two standard deviations from the mean), it was not foreclosed from going with a single deficiency trigger instead.⁴¹

Following this decision, the plaintiffs filed for an injunction to stop HHS from implementing the DRS pending appeal.⁴² The district court denied the injunction on the grounds that the plaintiffs failed to show any likelihood of success on the merits.⁴³ The court also held that the plaintiffs could not show that they would suffer irreparable harm if they were not granted the injunction. In addition, the delay would require HHS to expend significant additional resources, and would require a new round of applications and reviews.⁴⁴ The plaintiffs appealed the ruling of the district court, and on May 21, 2013, a three judge panel of the District of Columbia Court of Appeals affirmed the lower court's ruling without an opinion.⁴⁵

Evaluation of the DRS

HHS has undertaken (via contract) an evaluation of the DRS to explore how and whether it is meeting goals of "transparency, validity, reliability," and "overall program quality improvement." The evaluation will examine the effectiveness of the DRS in differentiating between higher and lower performing grantees and in improving the overall quality of Head Start programs by the introduction of competition.⁴⁶ HHS awarded the evaluation contract in 2012. The evaluation is slated to run through 2015.

³⁹ Ibid., 347.

⁴⁰ Ibid., 349.

⁴¹ Ibid., 357.

⁴² *Ohio Head Start Ass'n v. United States Dep't Health and Human Serv.*, 902 F. Supp. 2d 61 (D.D.C. 2012).

⁴³ Ibid., 65.

⁴⁴ Ibid., 71.

⁴⁵ *Ohio Head Start Ass'n v. United States Dep't Health and Human Serv.*, No. 12-5231, U.S. Court of Appeals for the District of Columbia Circuit, filed May 21, 2013.

⁴⁶ U.S. Department of Health and Human Services, Administration for Children and Families, *Evaluation of the Head Start Designation Renewal System (DRS), 2012-2015: Project Overview*, January 1, 2012, http://www.acf.hhs.gov/sites/default/files/opre/evaluation_of_the_head_start_designation_renewal_system.pdf.

Table 3. DRS Triggers for Identifying Grantees for Re-competition

Seven Triggers for Re-competition	Related Definitions or Additional Detail
<p>One or more deficiencies in a single monitoring review.^a</p> <p><u>Note:</u> All grantees must participate in a monitoring review at least once every three years. If HHS determines, based on findings from a monitoring review, that a grantee has a deficiency, the grantee must correct the deficiency or risk termination. Under the final rule, a grantee with a deficiency identified during its DRS review period must re-compete, regardless of whether the deficiency has been corrected.</p>	<p>Deficiencies refer to the systemic or substantial material failure of a grantee to comply with state or federal requirements, particularly those which involve (1) threats to the health, safety, or civil rights of children or staff; (2) denial of parents' rights to exercise their full roles in program governance; (3) failure to perform substantially on requirements related to early childhood development, health services, family and community partnerships, or program design and management; (4) misuse of Head Start grant funds; (5) loss of legal status or financial viability, loss of permits, debarment from receiving federal grants or contracts; (6) any other violation of federal or state requirements (e.g., failure to correct deficiencies identified by HHS for corrective action); etc.</p> <p>See definitions at Section 637(2) of the Head Start Act and 45 C.F.R. 1304.3(a)(6).</p>
<p>Failure to establish and use school readiness goals, including failure to</p> <ul style="list-style-type: none"> Analyze individual child-level assessment data to determine (with other inputs) each child's status and progress on developmental domains and to individualize instructional strategies and services. Analyze aggregate child-level assessment data at least three times per year (except for programs operating for less than 90 days, which must analyze data at least twice per program period) to determine (with other inputs) each grantee's progress toward school readiness goals and to promote continuous program improvement. 	<p>School readiness goals refer to "progress across domains of language and literacy development, cognition and general knowledge, approaches to learning, physical well-being and motor development, and social and emotional development that will improve their readiness for kindergarten." The regulation calls for these goals to appropriately reflect ages of participating children; align with the Head Start Child Development and Early Learning Framework;^b state early learning guidelines, and requirements and expectations of local schools (if applicable); and be established in consultation with parents.^c</p> <p>Child-level assessment data refers to data collected from "one or more valid and reliable assessments of a child's status and progress, including but not limited to direct assessment, structured observations, checklists, staff or parent report measures, and portfolio records or work samples."</p> <p>Aggregate child-level assessment data refers to data collected on the "status and progress of children that have been combined to provide summary information about groups of children enrolled in specific classrooms, centers, home-based or other options, groups or settings, or other groups of children such as dual language learners, or to provide summary information by specific domains of development."</p> <p>See full definitions at 45 C.F.R. 1307.2.</p>
<p>A low score on one or more domains during the most recent CLASS: Pre-K observation. For grantees with multiple classrooms, scores are averaged across all classrooms observed (based on a random sample of all classes).</p> <p><u>Note:</u> This indicator will not be used for Early Head Start programs or programs operating a home-based option only.^d</p>	<p>The CLASS: Pre-K rates classroom interactions in 3 domains using a 7-point scale. Re-competition is triggered by scoring below a minimum quality threshold on any domain <u>or</u> by scoring in the bottom 10% of all grantees for any domain.</p> <p><u>Minimum Quality Thresholds by Domain:</u> Emotional Support = Below 4 Classroom Organization = Below 3 Instructional Support = Below 2</p> <p>An exception is made for grantees in the bottom 10% if their score equals or exceeds an "exceptional" level of quality (a score of 6 or higher in any domain).^e</p>
<p>Revocation of agency's license by state or local authority.^f</p>	<p>An exception is made if the revocation is overturned or withdrawn before the announcement of the competition.</p>
<p>Suspension of operations by HHS.</p>	<p>An exception is made if the suspension has been overturned or withdrawn, or the grantee has appealed the suspension and has not had a chance to show cause as to why it should be lifted or not be imposed.</p>
<p>Debarment from receiving funds from any federal or state agency or disqualification from participating in the CACFP.^f</p>	<p>n/a</p>

Seven Triggers for Re-competition	Related Definitions or Additional Detail
Determined to be at risk of ceasing to be a going concern by HHS based on an audit or investigation within the 12 month period preceding a DRS review. ^f	Going concern is defined as “an organization that operates <i>without</i> threat of liquidation for the foreseeable future, a period of at least 12 months.” See definition at 45 C.F.R. 1307.2.

Source: Table prepared by CRS based on information provided in the DRS Final Rule published by the U.S. Department of Health and Human Services (HHS), Administration for Children and Families (ACF), Office of Head Start (OHS), *Federal Register*, Vol. 76, No. 217, pp. 70010-70032, November 9, 2011.

Notes: CLASS = Classroom Assessment Scoring System. CACFP = Child and Adult Care Food Program.

- a. In FY2009, a total of 22 grantees (4.5% of all grantees who underwent first year or triennial reviews) were found to have one or more deficiencies, according to the *Report to Congress on Head Start Monitoring, Fiscal Year 2009*, http://eclkc.ohs.acf.hhs.gov/hslc/mr/rc/FY2009_Head_Start_%20Monitoring_Report.pdf.
- b. HHS Administration for Children and Families, Office of Head Start, The Head Start Child Development and Early Children Framework: Promoting Positive Outcomes in Early Learning Programs Serving Children 3-5 Years Old, Revised September 2011, [http://eclkc.ohs.acf.hhs.gov/hslc/tta-system/teaching/eecd/Assessment/Child%20Outcomes/HS_Revised_Child_Outcomes_Framework\(rev-Sept2011\).pdf](http://eclkc.ohs.acf.hhs.gov/hslc/tta-system/teaching/eecd/Assessment/Child%20Outcomes/HS_Revised_Child_Outcomes_Framework(rev-Sept2011).pdf).
- c. For examples of school readiness goals for Head Start programs, see <http://eclkc.ohs.acf.hhs.gov/hslc/tta-system/teaching/docs/sr-goals.pdf>. For examples of school readiness goals for Early Head Start programs, see <http://eclkc.ohs.acf.hhs.gov/hslc/tta-system/ehsnrc/Early%20Head%20Start/early-learning/curriculum/school-readiness-goals-infants-toddlers.pdf>.
- d. According to the preamble to the final rule, “ACF will consider incorporating a valid and reliable measure of teacher-child interaction in Early Head Start and in the Home-based program option when such a tool becomes available” and would implement such a tool only after “soliciting public input through an NPRM” (see 76 *Federal Register* 70020).
- e. In FY2012, the lowest 10% of CLASS scores by domain were equal to or less than 5.4926 for Emotional Support, 4.8571 for Classroom Organization, and 2.1923 for Instructional Support. For more information, see <http://eclkc.ohs.acf.hhs.gov/hslc/sr/quality/class>.
- f. Head Start agencies must report to HHS (in writing) within ten working days if any of these events occur. Agencies would also be required to notify HHS within ten days if they have filed for bankruptcy or agreed to a reorganization plan as part of a bankruptcy settlement.

Author Information

Karen E. Lynch
Specialist in Social Policy

Acknowledgments

Erin Davis, Law Clerk, prepared the legal section of this report, under the general supervision of Kathleen Swendiman, a legislative attorney in the American Law Division

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.